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ABSTRACT

This document explains some aspects of the law which affect teachers in general and student teachers in particular. Five issues are examined. The first issue concerns state laws which affect student teachers, with Illinois and Indiana laws used as examples. Some of these laws have to do with liability insurance, credentialling, clinical training, and arrangements for student teaching. The second issue is tort liability of schools and teachers. It is suggested that supervising teachers may be held responsible for harm which befalls a student teacher through their negligence, and student teachers can be held responsible for the safety of children. The third issue is collective bargaining: teacher-board negotiations concerning student teaching. The author states that he expects the profession to demand more control over aspects of student teaching. The fourth issue concerns school discipline; two important cases are described: Goss v. Lopez, and Wood v. Strickland. The fifth issue is the emerging concept of a "right to learn"; the Peter Doe and Ianniello cases are discussed. In the former case, still pending, a high school graduate has sued the San Francisco school system for failing to teach him to read. If a right to learn becomes an accepted legal construct, the author speculates that specific kinds of responsibilities of schools and teachers will have to be clarified. (CL)

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Student Teaching and The Law

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ERIC CLEARINGHOUSE ON TEACHER EDUCATION

Student Teaching and the Law

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Foreword

He who goes to law (as the proverb goes) takes
a wolf by the ears.
--Robert Burton, The Anatomy of Melancholy

The purpose of this Special Current Issues Publication (SCIP) series is to clarify important issues in education today. This SCIP is devoted to student teaching and the law. It is safe to say that in these days of educational accountability and tort suits for educational negligence, laws concerning education are a topic of great interest. Remarks of concern and apprehension from educators about legal responsibilities and legal restrictions echo the tone of the statement from Robert Burton quoted above. Both panic and worrisome talk are of little use, but rather the legal responsibilities of schools to students and school personnel should be well studied. In relation specifically to teacher education, it is important that the trainers of preservice teachers are themselves aware of, and include as part of the curriculum, information on the legal responsibilities of both prospective and practicing teachers. This publication is intended to help develop such awareness.

The Clearinghouse is grateful to William R. Hazard for his contribution. This publication is a revised version of a paper prepared by Dr. Hazard for the Student Teaching Supervisors Conference at Eastern Illinois University, October 2-3, 1975. Dr. Hazard is both a practicing attorney and professor and Associate Dean of Education, Northwestern University, Evanston, Illinois.

The Clearinghouse hopes that this publication proves of interest and welcomes any comments or suggestions.

Joost Yff, Director
ERIC Clearinghouse on Teacher Education

Directly or indirectly, the law impinges on every aspect of schooling. The impact of law on education expands as the legal machinery in the form of case law, legislation, and administrative rules and regulations moves to shape the financial, social, structural, personnel, and procedural dimensions of schooling at all levels.

The impact of the law on all aspects of education has intensified since the Brown decision some 21 years ago, as can be seen in the following selection of relevant cases:

> Brown[1] declared the federal policy of racial desegregation in the schools and turned the schools around in terms of curriculum, testing programs, pupil personnel policies, and teacher preparation;
>
> Hobsen v. Hansen,[2] a case involving Washington, D.C. schools, challenged the entire pattern of second-class schooling, racially-motivated "tracking", testing, and attendance zones, along with the teacher assignment policies antithetical to racial balance in faculty appointments;
>
> In re Gault[3] declared that the federal constitution applies to children and warned the schools that even children had constitutionally protected rights;
>
> Tinker[4] served as a clear enunciation of student rights in the school setting and announced to the schools a clear reminder that discipline and order must be found within the constitutional framework. To the extent that schooling policies and procedures were arbitrary and capricious, such discipline procedures were suspect.
>
> Serrano[5] and Rodriguez,[6] with their numerous parallel cases in state courts, opened for inquiry the broad issues of equal protection of the law, access to public education, and state finance apparatus.

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1 Brown v. Board of Education, 347 N.S. 483 (1954).

2 269 F. Supp. 401 (1967).

3 387 U.S. 1 (1967).

4 Tinker v. Des Moines Independent Community School District, 89.

5 Serrano v. Priest, 5 Cal. 3rd 584, 487 P. 2d 1241 (1971).

6 San Antonio Independent School District, et al., v. Demetrio P. Rodriguez, et al. 93 S.Ct. 1278 (1973).

The law, once a distant cousin to education and schooling, has moved dramatically into a close partnership. It is becoming increasingly clear that the really important educational decisions are made in the Congress and in the courts, and that the law carries substantial implications for the preparation and practice of teaching.

Aside from a few relatively minor laws dealing specifically with student teachers, the significant legal problems germane to student teaching are the same ones affecting the profession at large. For whatever comfort there is, student teaching and supervision activities have triggered very few lawsuits. Apart from the usual risk of suits in tort[7] for negligence, student teachers are generally not of sufficiently high stature to serve as defendants in suits by pupils or parents. This may change, but at this point the law speaks softly to preservice professionals and more stridently to the practitioners.

This paper will deal briefly with state laws relating to student teachers, using Illinois and Indiana as examples; the general nature of tort liability of schools, student teachers, and the student teaching experience; the legal consequences of teacher/board bargaining as it affects the student teaching enterprise; the implications of the Goss v. Lopez and Wood v. Strickland decisions concerning school discipline procedures; and a few speculative observations about the legal duty of schools to clients as raised in the important Peter Doe and Ianniello cases.

STATE LAW AND STUDENT TEACHERS

State law controls the licensing of teachers and mandates the minimum dimensions of their clinical preparation. The specific machinery for student teaching and supervision generally is left to the colleges and universities, subject, of course, to negotiated agreements between teacher unions and school districts. The administration of teacher licensing is typically assigned to the chief state school office, and the administrative rules and regulations issued by the state office control the process and practice of clinical preparation. Thus, decisions about student teaching are made by legislatures, state education offices, teacher educators, school districts, and practicing teachers and administrators. Both of our example states--Illinois and Indiana--expressly provide for agreements between school districts and higher education institutions concerning student teaching. Across the country, 20 states recognize student teaching through legislation concerning liability insurance, credentialling, the nature of clinical training,

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[7] A tort is a civil wrong which causes injury or damage to another person.

arrangements for student teaching, and other direct or indirect references to student teaching.[8]

The Indiana Statutes indicate:

> Public school corporations are authorized to enter into agreements with institutions of higher education accredited by the training and licensing commission of Indiana, for the purpose of providing teaching experience for students thereof preparing for the education profession and for the services of persons working jointly for any such school corporation and any such institutions. (Burns Indiana Annotated Statutes, Sec. 20-5-10-1, Chapter 10.)
>
> Each such agreement shall set out the responsibilities and rights of such public school corporations, such institutions, and such student or other persons. (Sec. 20-5-10-2).

In Illinois, under the enumerated duties of public school boards, the statutes empower the board "to enter into agreements with teacher training institutions to provide facilities for student teaching in the schools of the district." (Illinois Revised Statutes, Sec. 10-22, 37, Chapter 122.) Further, in Illinois, statutes expressly include student teachers in both the indemnification and insurance provisions for school personnel. Sec. 10-20.20 provides that the board has a statutory duty to ". . . indemnify and protect student teachers against civil rights damage claims and suits, constitutional rights damage claims and suits and death and bodily injury and property damage claims and suits . . ." when such claims arise out of alleged negligent or wrongful conduct committed in the scope of employment or under the direction of the board. The protection extends to student teachers for acts committed during the time in which the person was a student teacher. Sec. 10-22.3 authorizes the school board to purchase liability insurance to cover student teachers for the negligence mentioned in 10-20.20. The key issues are the scope of employment and negligence by student teachers. No mention is made of the college supervising teacher, and unless such supervisor qualifies as a board employee--an unlikely condition--the question of supervisor liability is open.

Other relevant statutory provisions include Sec. 10-22.34, Chapter 122, Illinois Revised Statutes, which provides for supervision by a certified teacher of the non-certified personnel

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8 Data available in 1973 indicated that the following states legislated some status for student teachers: Alabama, Arizona, California, Connecticut, Florida, Illinois, Indiana, Iowa, Massachusetts, Minnesota, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Washington, and West Virginia.

in instructional roles. The Section does not apply, however, to student teachers "enrolled in a student teaching course at a college or university, provided such activity has the prior approval of the representative of the institution and has been discussed with and approved by the supervising teacher and further provided that such teaching is within the guidelines established by the Superintendent of Public Instruction in consultation with the State Teacher Certification Board."[9]

Also, Sec. 21-21, Chapter 122, Illinois Revised Statutes includes, in the provisions for "recognition" by the state as a teacher training institution (school, junior college, university, or special or technical school), the statement: ". . . no school or institution shall make assignments of student teachers or teachers for practice teaching so as to promote segregation on the basis of race, creed, color, religion, or national origin."

As noted above, these specific statutory provisions concerning student teachers are relatively minor in the larger context of the law on the preparation for and practice of teaching.

TORT LIABILITY AND STUDENT TEACHERS

The statutes cited above anticipate civil liability for student teachers who deal closely with pupils and would generally have a professional's duty of care toward the pupils. Every person, student teacher, and John Q. Citizen alike is responsible for his/her own negligent acts. Student teachers, as quasi-licensed professionals, would stand in a teacher-like relationship to pupils as to supervision, duty of care, and so forth. The cooperating or "critic" teacher, charged with the supervision of the student teacher's daily performance, is more likely than the college supervisor to face tort liability by imputation. Typically, the cooperating teacher is expected to monitor student teachers, and failure to do so may be actionable if the proximate result of such failure is injury to the pupil.

Some interesting speculation centers about the cooperating and supervising teachers' duty toward the student teacher. It is conceivable that cooperating and supervising teachers could be liable for injuries suffered by student teachers if the cause of the injury was such that the supervisor knew or should have known of it and should have acted to prevent the injury. The possibility of cooperating and supervisory teacher liability to the student teacher derives from their duty to warn the student teacher of known or presumptively known dangerous conditions or instrumentalities. For example, if the cooperating teacher

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9 Not applicable in Chicago.

knows of the danger of disruptive behavior from one or more students and fails to adequately brief the student teacher, it is not far-fetched to impose tort liability for the failure to warn or otherwise take due care toward the student teacher should injury result. As a business invitee or licensee, the student teacher has a right to appropriate care from those carrying supervisory responsibilities.

We overlook some important areas of the law and education in our teacher education programs. We are short-changing our young teachers by licensing them with little or no awareness of the serious legal pitfalls and some reasonable ways to steer clear of them. Somewhere in the professional sequence we need to expose the prospective teacher to a broad range of legal/educational issues and to deal with those aspects of professional decision-making left, by default, to the socialization processes in each work setting. Generally, student teachers should be apprized of the elements and conditions of tort liability: duty, breach, proximate causation, injury, and liability.

Looking for a moment at the general nature of tort liability, we can see some basic dimensions of the problem. Schools are organized to educate children, not hurt them. Given the purpose of schooling, it is easy to understand the traditional legal concerns for the safety and physical care mandated by law on schools and to accept the notion that school personnel, including student teachers, have special responsibilities derived from their special roles and relationships with children.

A recent memorandum[10] issued by the National Association of Secondary School Principals (NASSP) cited a number of cases involving teacher liability for injuries to pupils arising from typical school situations--field trips, transportation, errands by pupils, and classroom activities. The fundamental questions in each case were: was there a duty owed; was that duty breached; was the breach the proximate cause of the injury? Some general principles drawn from tort cases will help to clarify this issue area:

1. "Due care" mandates teachers to attempt to foresee dangers to pupils and to take reasonable steps to avoid these dangers.

2. Actual knowledge of defective structures, equipment, or school premises is not required if the teacher reasonably should have known.

3. Teachers must exercise reasonable care toward pupils, but do not insure their safety. What is "reasonable"

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10 NASSP, A Legal Memorandum, "Responsibilities for Student Injury Occurring Off School Property," March-April, 1975.

depends on the situation, the age of the children, the nature of the activity, and the potential danger in the circumstances.

4. The greater the possibility of danger to students, the greater the precautions for safety.

5. The closer the relationship of the activity to school purposes, the more likely is liability in tort.

6. Where direct supervision is not feasible (e.g., some work-study assignments, off-campus study, independent study) the risks and dangers should be communicated clearly to the pupils.

7. The particular kind of "care" and closeness of supervision depends on the age, maturity, and specific settings of the pupils.

Awareness of tort liability should not lead us to decision paralysis, but rather to rational procedures designed to balance good education and sound practice. We live in litigious times with both pupils and parents increasingly aware of their legal rights. To play all education totally "safe" in a legal sense is impossible. But the necessary risks in good education can be recognized, covered by insurance, and reduced through prompt, effective teaching and learning.

COLLECTIVE BARGAINING AND IMPLICATIONS FOR STUDENT TEACHING

An earlier examination[11] of the state of negotiated teacher/board agreements as they dealt with student teaching revealed a broad range but relatively few negotiated provisions for student teaching. 198 out of 1,529 Type I contracts reported in the 1970-71 National Education Association (NEA) survey included such provisions. These findings were supported in a more recent analysis[12] of negotiated contracts in 30 districts ranging in faculty size

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11 William R. Hazard, "Negotiations and the Education of Teachers" in M. Lindsey (ed.), Teacher Education: Future Directions, (Washington, D.C.: Association of Teacher Educators, 1970), pp. 100-120.

12 William R. Hazard, "Notes on Negotiation and Teacher Education" in Joseph F. McCarthy (ed.), The Training of America's Teachers (New York: Alumni Association of the School of Education, Fordham University 1975), pp. 131-152.

from 74 (Clare, Michigan) to 4,300 (Seattle, Washington) and representing 17 states. The negotiated provisions deal with payment to supervising teachers, qualifications for appointment as supervisors, administrative processes for student teaching, inservice credit for salary and promotion, limitation on numbers of student teachers, and protection of the host school program.

Negotiated provisions for student teaching usually ignore the teacher education institution; the negotiations run between teachers and boards, and the agreement is fait accompli as to the college or university. These provisions, and the negotiations behind them, have serious implication for the future of teacher education. It seems clear that schools will take increasingly central roles in the clinical preparation of new teachers. The power of collective bargaining is formidable in many states and there is every reason to expect the negotiations to include (1) the important elements of the student teaching operation, including payment to the school or the cooperating teacher, or both; (2) the preparation of student teachers prior to the clinical phase; and (3) the roles and responsibilities of the college supervisor, the cooperating teacher, and the student teacher. In short, we should not be surprised if the organized profession demands more control over the route to entry into teaching.

A few years ago, I made a number of observations[13] about the consequences of negotiations for student teaching. I believe that they are still valid and will summarize them briefly:

1. Teacher preparation will become more clearly the responsibility of the total profession, not just the colleges and universities. The "we train, you hire" teacher preparation mentality has interfered with program development in the professional areas, liberal arts areas, and the clinical training component. Schools today either complain about the inadequately-trained products of teacher education programs or can simply refuse to employ ill-trained applicants. With the current teacher surplus, school districts can be considerably more selective, but this merely camouflages the problem. It is clear that neither schools nor colleges can adequately prepare teachers in isolation from the other. Schools will take an increased responsibility in teacher education.

2. Practicing teachers will demand the respect and dignity of partners in teacher training programs.

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13 Ibid., pp. 149-150.

Traditional college-school relations are based on the concept of pecking-orders in education: college faculty deal out knowledge, school staff toil in the vineyards. School supervising teachers know that their's is the only meaningful educational intervention for most school children, while the value of campus-based education is often questioned. This may turn the pecking-order around in teacher education. Teachers negotiating with boards for new voices in decision-making may seek increased voice in the clinical training program and bring about the partnerships between schools and universities that have been talked about for years.

3. Clinical training will become more important in the professional training programs. The current popularity of the field-based clinical component supports the notion of prospective teachers' active engagement with pupils and teachers on a sustained basis rather than through short, "one-shot" student teaching experiences. The extensive use of clinical assignments as a tool for the exploration, assessment, and evaluation of teaching and the teaching profession will result from the need for more reliable screening in and out of teacher education. The developing interest in educational accountability evidences increased concern with the outcomes and products of teaching performance. With the evaluation and assessment of teaching will come greater appreciation and knowledge of the idiosyncratic elements in effective practice. It seems reasonable to expect that teacher preparation will turn more and more to school-based clinical experiences as a major component of the total program.

4. Teacher board negotiations will spread and the process will become more effective and pervasive as a system of educational jurisprudence. Using Carlton's conception of teacher-board bargaining as a three-stage maturation process (from nativity to adolescence to maturity), as education negotiations mature the probability of collective bargaining ("How can both sides benefit?") increases, and the incidence of distributive bargaining ("What's in

it for me?") declines. This suggests that teachers may see bargaining as a more useful and effective tool to improve teacher preparation than the traditional school-university dialogue has been. As the pressure for providing clinical "slots" mounts, the schools may turn more and more to negotiated terms and conditions of participation. Once through the initial shock of negotiated student teaching program ground rules, the long-range benefits to the students, the schools, and the university may far outweigh the inconvenience. This advent of collective bargaining and negotiated provisions for student teaching may be one more sign of change in a training program long chained to tradition.

To sum up the implications, we should expect student teaching to become a bilateral (schools and colleges) responsibility in substance as well as in form. The paradox may be this: as competition for scarce school dollars increases, pressure may mount to restrict student teaching opportunities at a time when schools desperately need the energy and contributions of new members of the profession. We should take the initiative in reforming school-university relations for student teaching.

EMERGENT MANDATES FOR STUDENT DUE PROCESS

The 1970s may well be labeled the "age of due process." Student rights are the topic of substantial legal review and school reform. Two recent cases, Goss v. Lopez[14] and Wood v. Strickland[15] need brief mention because of their importance to school discipline. These cases have no special meaning for student teachers but speak to the current dilemma of individual vs. corporate interests in the school setting.

Goss v. Lopez seems to require that, except in those exceptional cases that warrant immediate removal, a pupil must be given notice and an informal hearing prior to a suspension of less than 10 days. This recognition of basic due process for students may have significant procedural impact on the role of teachers and administrators. Certainly, as the majority opinion notes, every child is entitled to know the charge and have a chance to be heard

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14 95 S, Ct. 729 (1975).

15 420 U.S. 308 (1975).

prior to a denial of his/her right of access to schooling. Most school disciplinarians already give this basic protection. When the student denies the charge, the process requires that the school authorities explain the nature of the evidence and give the student an opportunity to tell his/her side of the story. Explaining the "nature of the evidence" is not clearly defined. If it requires the disclosure of information sources, the problems of retribution and "witness protection" take on some ominous overtones in many schools.

Yet another issue is raised by the student's denial of the charge. In Wood v. Strickland, the Supreme Court refused to recognize immunity of school board members acting in their official capacity and imposed personal tort liability for the board's expulsion of school children for their violation of explicit school policy concerning alcoholic beverages. The expulsion process, according to the majority opinion, violated the student's civil rights under Section 1983 of the Civil Rights Act, and exposed the defendant board members to personal liability therefor.

Once the accused student denies the charge, it seems to be risky to move to a suspension or expulsion decision without further investigation. The nature of the investigation ranges, apparently, from a simple confirmation of the charge by the witness to a confrontation of witness and accused with the formal trappings of a quasi-judicial hearing. Certainly, if school officials do not investigate further prior to a suspension, the student's denial, if later vindicated by investigation, would clearly seem to put the school officer on notice as to the student's constitutional rights and could, with no stretch of legal principles, justify a finding that the school official violated the student's civil rights.

The extent and nature of student rights are not yet clear. However, it seems safe to believe that:

a. arbitrary, capricious penalties imposed on school pupils are highly suspect; some persuasive evidence that the student interfered with school processes seems required to justify the interference with the student's constitutional right or interest;

b. once the student establishes a right or interest protected by the federal or state constitution, the duty shifts to the school authorities to justify the interference;

c. the potential for personal liability under the Civil Rights Act could well encourage teachers (and student

teachers) to overlook, ignore, and otherwise play down student misbehavior rather than risk the serious negative consequences by reporting and processing any but the most serious offenses. If such comes to pass, perhaps we should revise the school rules toward leniency rather than ask the most vulnerable school personnel to face the risks of strict enforcement or to compromise their integrity.

Given the nature of schooling and the heavy social and political expectations from schooling, we may be forced to revise our casual assumptions that schools can serve as judges and juries in the school discipline process. There is a glaring gap between in-school ground rules and community ground rules for behavior, and one can hardly be sanguine about the prospects of school teachers bridging the gap, particularly in light of the court's recent posture toward student rights.

It is doubtful that the schooling environment can handle a learning stimulation and facilitation role at the same time that it develops a reasonably complex system of juvenile jurisprudence. We have nearly given up on the ability of prisons and reform schools to confine and rehabilitate criminals; we should not persist in the folly of expecting to teach and reform children. Perhaps we can find ways to teach children and, at the same time, produce reasonably effective social and human development. If student teaching does anything, it gives the novice professional a good taste of some exquisite dilemmas.

TWO CASES: PETER DOE AND IANNIELLO -- ACCOUNTABILITY WITH TEETH

The Peter Doe suit against the San Francisco School District, its school board, and professional staff is one of the most interesting tort suits in some time. Peter Doe (an alias) sought to recover money damages ($500,000) for alleged negligency by the defendants for their failure to teach him to read. Peter was normally intelligent, attended school regularly, and graduated on schedule--but with only fifth grade level reading skills. The theory of his suit (on appeal from the trial court) is that the school's duty of care extends to causing him to learn. He did not learn, the duty was breached and, therefore, the school and its relevant agents are liable in tort for his failure to learn. According to the complaint, the duty to teach was imposed on the school by the state constitution and related school statutes.

Peter Doe graduated from Galileo Senior High School in January 1972, after spending 12 years in compulsory attendance at elementary

and secondary schools operated by the defendant school district. Despite the plaintiff's average or slightly above average I.Q. (as evidenced by intelligence tests administered by the defendant district), his average attendance record, and "clean" disciplinary record, the plaintiff graduated from high school with fifth grade reading ability; he was functionally illiterate. The complaint, sounding in tort, states seven counts:

1. The defendant negligently failed to use reasonable care in discharging its duties to provide the plaintiff adequate instruction, guidance, counseling, and supervision in basic academic skills. In support of this count, the plaintiff alleged that the defendant:
   a. failed to take notice of the plaintiff's reading disabilities;
   b. negligently assigned the plaintiff to classes where the materials were too difficult for the plaintiff's reading ability;
   c. advanced the plaintiff from grade to grade despite plaintiff's inadequate knowledge and skill development;
   d. assigned the plaintiff to classes with instructors not qualified or unable to teach the subject;
   e. graduated the plaintiff from high school although the plaintiff was unable to read above the eighth grade level (as required by the California Education Code, Section 8573);
   f. as a proximate result of the defendant's negligence, the plaintiff has failed to learn adequately and has suffered a loss of earning capacity, and mental distress, pain and suffering;
   g. the injuries will be permanent and the general damages amount to $500,000;
   h. the plaintiff has had to employ private tutoring, the cost of which should be assessed to the defendant;
   i. the plaintiff's claim for $500,000 damages was rejected by the defendant board.

2. The defendant school misrepresented the plaintiff's true performance in basic academic skills to the plaintiff's mother and misled her by concealing the school's lack of knowledge about their claims of the plaintiff's performance.

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3. The defendant district and defendant board violated their statutory duty to keep parents and guardians of minor pupils informed as to their accurate educational progress and achievements.

4. The defendant district violated its constitutional and statutory duty to instruct the plaintiff, and other students, in the basic skills of reading and writing.

5. The defendant district failed to adopt high school graduation requirements which equal or exceed the minimum prescribed state standards (read at grade eight level or take a one-semester reading course).

6. The defendant board violated a statutory duty to monitor and modify the curriculum and school operations so as to promote the education of pupils enrolled therein.

7. The defendant district violated its statutory duty to design the course of instruction to meet the needs of the pupils for which the course of study is prescribed.

In sum, then, the complaint said, "Defendants, you negligently failed to cause me to learn. I didn't learn because you failed to teach, and your wrong has injured me to the tune of $500,000."

Defendants demurred to all causes of action alleged in the complaint for the reasons that (a) the seven counts in the complaint do not state facts sufficient to constitute a cause of action, and (b) the count of fraud and misrepresentation is absolutely barred by the state government code. Defendants' demurrer is based on their contention that the law neither recognizes the plaintiff's claims nor protects the interests they seek to advance.

In a real sense, Peter Doe is educational accountability translated into a law suit.

The Ianniello case, currently pending in Connecticut, raised the issue of college liability for alleged discrepancies between course descriptions and actual course content and, inferentially, for alleged failure by a college to teach the plaintiff-student.

Intriguing prospects are raised both by the two cases and by the related political movement toward legislated accountability[16] for

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16 As of Fall 1973, 27 states had enacted some form of legislated accountability and two states had adopted joint resolutions on the subject. For a review of the legislation, see Legislation by the States: Accountability and Assessment in Education (Denver, Colo.: Cooperative Accountability Project), August 1973.

schools. The consequences of holding schools legally liable for learning have not been examined carefully by any constituent group--teachers, pupils, or administrators. In my view, it is one thing to hold schools and school people accountable for the quality of education offered; it is quite another to hold them liable for the learning outcomes. We know very little about the relationship, if any, between teaching behaviors and learning outcomes. When push comes to shove, we can only suggest that certain educative processes, when coupled with certain inputs, may lead to learning outcomes. The I-teach/you-learn equation is grotesquely simplistic despite its political appeal.

If the courts redefine the schools' legal duty to include the child's right to learn, other consequences will follow. The right to learn (or the property right to education) takes on meaning only in specific circumstances. As a parallel, the right of due process means nothing apart from specific contexts. Thus, if the court finds pupils entitled to learn, a series of decisions will define the specifics of the right. The kind of instruction, setting, educational tools, processes, and schedules, the qualifications and performance of teachers, the kind and quality of supervision, all will be germane to the question of liability for breach of the school's duty to specific plaintiffs. At the risk of sounding pessimistic, one must speculate that the creation of a legal right to learn may be the destruction of any notions of individualized instruction. No school person in his or her right mind will knowingly deviate from the judicially-defined curriculum or instructional processes. When the price of risk-taking becomes too high, risk-taking will cease. A victory for the plaintiff Peter Doe or Ianniello will be a powerful incentive for schools to give pupils exactly what the statutes and case law require--no less and likely little more.

CONCLUSION

The law, then, reaches to the student teaching enterprise in diverse ways. State law establishes the machinery for teacher preparation, licensing, and professional conduct. Clearly, the nature, extent, and outcomes of student teaching turn on a set of interdependent decisions by the teacher education institutions, the policies, procedures of the host district and its negotiated provisions for student teaching, and the interactions of the principal actors in the professional drama.

State laws specifically provide for some aspects of the student teaching machinery, generally in the areas of insurance and indemnity for tort liability. Beyond these specific statutory provisions, the general law of torts in school contexts applies to student teachers. The basic concept of duty of care-breach-proximate causation of injury or damage applies in diverse school situations. As to the

liability of the cooperating and supervising teachers, liability can attach in certain circumstances under the doctrine of respondeat superior[17]

Negotiated provisions for student teaching represent a new and growing challenge to the future of student teaching--at least in the public school districts. There is evidence that unilateral and informal bilateral decision-making about student teaching arrangements will become more formal and, unless teacher education institutions take aggressive leadership, they may be negotiated right out of the picture. Teacher/board negotiations could ignore the colleges and present a complete set of bargained conditions on a take-it-or-leave-it basis. The consequence is that schools and the organized teacher threaten to take on significant roles in the future of student teaching.

Student rights and a dramatically different legal concept of the school's duty of care may represent two of the most challenging problems for teacher education in the next decade.

Whatever else teacher education may be in the next decade, it likely will not be dull. If it is--we do not understand the problems.

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17 A doctrine from common law holding the employer legally responsible for the wrongful acts of employees.